

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

CIVIL ACTION NO. 04-12629-RWZ

USGEN NEW ENGLAND, INC., a  
Subsidiary of NATIONAL ENERGY &  
GAS & GAS TRANSMISSION, INC.,  
f/k/a PG&E NATIONAL ENERGY  
GROUP, INC.,

Plaintiff,

v.

BENTLY NEVADA, LLC, f/k/a BENTLY  
NEVADA CORPORATION, LLC and  
BENTLY PRESSURIZED BEARING  
COMPANY, f/k/a BENTLY NEVADA  
CORPORATION,

Defendants

**ANSWER AND AFFIRMATIVE  
DEFENSES OF BENTLY  
PRESSURIZED BEARING COMPANY**

The Defendant, Bently Pressurized Bearing Company, f/k/a Bently Nevada Corporation ("Bently Pressurized"), hereby responds to the numbered paragraphs of the Complaint of USGEN New England, Inc., a subsidiary of National Energy & Gas & Gas Transmission, Inc., f/k/a PG&E National Energy Group (the "Plaintiff"), as follows:

**INTRODUCTION**

1. Bently Pressurized states that Paragraph 1 of the Complaint contains a conclusion of law to which no response is required. Further answering, Bently Pressurized is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 1 of the Complaint and, therefore, denies same.

**PARTIES**

2. Bently Pressurized is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 2 of the Complaint and, therefore, denies same.

3. Bently Pressurized denies the allegations contained in Paragraph 3 of the Complaint.

4. Bently Pressurized admits the allegations contained in Paragraph 4 of the Complaint.

### **VENUE AND JURISDICTION**

5. Bently Pressurized admits the allegations contained in Paragraph 5 of the Complaint only as to Bently Pressurized, and denies the allegations as to Bently Nevada.

6. Bently Pressurized denies the allegations contained in Paragraph 6 of the Complaint. Further answering, Bently Pressurized states that venue is proper in this District Court pursuant to 28 U.S.C. §1441(a) because this District and Division embrace Essex County, Massachusetts where this case was pending prior to removal.

### **FACTUAL ALLEGATIONS**

7. Bently Pressurized is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 7 of the Complaint and, therefore, denies same.

8. Bently Pressurized denies the allegations contained in Paragraph 8 of the Complaint. Further answering, Bently Pressurized states that it was retained to install a new 3500 TSI Machinery Protection System including TDXnet and Data Manager 2000 machinery management system on Unit #2 Westinghouse turbine generator at PG&E Salem Harbor Station in Salem, Massachusetts.

9. Bently Pressurized denies the allegations contained in Paragraph 9 of the Complaint.

10. Bently Pressurized denies the allegations contained in Paragraph 10 of the Complaint. Further answering, Bently Pressurized states that it replaced the existing probe in

accordance with the scope of work, design diagrams, and consultations with both the Plaintiff and the original equipment manufacturer's representative, as well as at the request and direction, and with the approval of Plaintiff.

11. Bently Pressurized admits the first sentence of Paragraph 11 of the Complaint and denies the allegations contained in the remainder of Paragraph 11 of the Complaint. Further answering, Bently Pressurized states that it tapped and plugged the holes in accordance with the scope of work, design diagrams, and consultations with both the Plaintiff and the original equipment manufacturer's representative, as well as at the request and direction, and with the approval of Plaintiff.

12. Bently Pressurized is without knowledge or information sufficient to form a belief as to the allegations contained in the first sentence of Paragraph 12 of the Complaint and, therefore, denies same. Further answering, Bently Pressurized denies the allegations contained in the remainder of Paragraph 12 of the Complaint.

13. Bently Pressurized is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 13 of the Complaint and, therefore, denies same.

14. Bently Pressurized is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 14 of the Complaint and, therefore, denies same.

15. Bently Pressurized is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 15 of the Complaint and, therefore, denies same.

16. Bently Pressurized is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 16 of the Complaint and, therefore, denies same.

17. Bently Pressurized is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 17 of the Complaint and, therefore, denies same.

18. Bently Pressurized is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 18 of the Complaint.

19. Bently Pressurized denies the allegations contained in Paragraph 19 of the Complaint.

**COUNT 1**

20. Bently Pressurized restates, realleges and incorporates herein by reference the previous paragraphs 1-19 of this Answer.

21. Bently Pressurized denies the allegations contained in Paragraph 21 of the Complaint. Further answering, Bently Pressurized admits that it owed Plaintiff a duty of care which included, *inter alia*, a duty to abide by the Plaintiff's requests and directions during the installation process, and a duty not to disregard the information obtained and the instructions received from both the Plaintiff and the original equipment manufacturer's representative.

22. Bently Pressurized denies the allegations contained in Paragraph 22 of the Complaint.

23. Bently Pressurized denies the allegations contained in Paragraph 23 of the Complaint.

24. Bently Pressurized states that Paragraph 24 of the Complaint contains conclusions of law to which no response is required. Further answering, Bently Pressurized denies the allegations contained in Paragraph 24 of the Complaint.

**COUNT 2**

25. Bently Pressurized restates, realleges and incorporates herein by reference the previous paragraphs 1-24 of this Answer.

26. Bently Pressurized denies the allegations contained in Paragraph 26 of the Complaint.

27. Bently Pressurized denies the allegations contained in Paragraph 27 of the Complaint.

28. Bently Pressurized states that Paragraph 28 of the Complaint contains conclusions of law to which no response is required. Further answering, Bently Pressurized denies the allegations contained in Paragraph 28 of the Complaint.

**COUNT 3**

29. Bently Pressurized restates, realleges and incorporates herein by reference the previous paragraphs 1-28 of this Answer.

30. Bently Pressurized states that Paragraph 30 of the Complaint contains conclusions of law to which no response is required. Further answering, Bently Pressurized denies the allegations contained in Paragraph 30 of the Complaint.

31. Bently Pressurized states that Paragraph 31 of the Complaint contains conclusions of law to which no response is required. Further answering, Bently Pressurized denies the allegations contained in Paragraph 31 of the Complaint.

**COUNT 4**

32. Bently Pressurized restates, realleges and incorporates herein by reference the previous paragraphs 1-31 of this Answer.

33. Bently Pressurized denies the allegations contained in Paragraph 33 of the Complaint.

34. Bently Pressurized denies the allegations contained in Paragraph 34 of the Complaint.

35. Bently Pressurized denies the allegations contained in Paragraph 35 of the Complaint.

36. Bently Pressurized denies the allegations contained in Paragraph 36 of the Complaint.

37. Bently Pressurized denies the allegations contained in Paragraph 37 of the Complaint.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim against Bently Pressurized upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

The Plaintiff, by its acts and conduct, is estopped from asserting and/or has waived its claims against Bently Pressurized.

#### **THIRD AFFIRMATIVE DEFENSE**

The Plaintiff's claims are barred by its unclean hands.

#### **FOURTH AFFIRMATIVE DEFENSE**

The Plaintiff has failed to mitigate its alleged damages.

#### **FIFTH AFFIRMATIVE DEFENSE**

The Plaintiff has not sustained any cognizable damage for which Bently Pressurized is responsible.

#### **SIXTH AFFIRMATIVE DEFENSE**

The Plaintiff has misnamed Bently Nevada as a Defendant in this matter, and therefore, the Complaint should be dismissed in its entirety as to Bently Nevada.

**SEVENTH AFFIRMATIVE DEFENSE**

The Plaintiff's claims are barred, in whole or in part, by its own acts, or failure to act, in a reasonably prudent manner under the circumstances.

**EIGHTH AFFIRMATIVE DEFENSE**

If the Plaintiff proves that it sustained injuries as alleged in the Complaint, the same were in no way caused by Bently Pressurized, or anyone acting with, through, for or under Bently Pressurized, or by anyone for whose negligence Bently Pressurized may be held legally responsible or answerable.

**NINTH AFFIRMATIVE DEFENSE**

Bently Pressurized states that if it were negligent or liable, which liability and negligence it expressly denies, Bently Pressurized's liability in any or all of the events was terminated by the intervening negligence or acts of others for whose conduct Bently Pressurized cannot be held legally responsible or answerable.

**TENTH AFFIRMATIVE DEFENSE**

The Plaintiff was not exercising due care when the alleged damage occurred, and the negligence of the Plaintiff caused the damages of which the Plaintiff now complains, and in accordance with Mass. Gen. L. c. 231, §85, the Plaintiff is barred from any recovery against Bently Pressurized.

**ELEVENTH AFFIRMATIVE DEFENSE**

Bently Pressurized states that if it should be found negligent, which negligence it expressly denies, that the negligence of the Plaintiff exceeds Bently Pressurized's alleged negligence, and the recovery to the Plaintiff must be reduced by the percentage of the negligence attributable to the Plaintiff in accordance with Mass. Gen. L. c. 231, §85.

**TWELFTH AFFIRMATIVE DEFENSE**

Bently Pressurized states that, to the extent that it had any obligations to the Plaintiff, such obligations have been fully, completely, and properly performed in every respect.

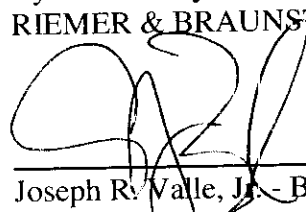
**JURY CLAIM**

The Defendant, Bently Pressurized, LLC, f/k/a Bently Nevada Corporation, hereby demands a trial by jury on all issues.

BENTLY PRESSURIZED BEARING  
COMPANY, f/k/a BENTLY NEVADA  
CORPORATION,

By its Attorneys,  
RIEMER & BRAUNSTEIN LLP

Dated: December 22, 2004



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Joseph R. Valle, Jr. - BBO No. 550291  
Craig J. Ziady - BBO No. 565216  
Riemer & Braunstein LLP  
Three Center Plaza  
Boston, Massachusetts 02108  
(617) 523-9000



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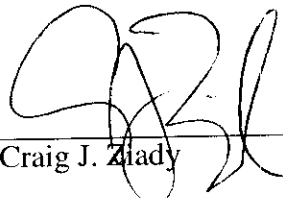
Defendants

**CERTIFICATE OF SERVICE**

I, Craig J. Ziady, hereby certify that on this date, December 22, 2004, I served the  
foregoing Answer by causing a copy of same to be delivered by first-class mail, postage prepaid,  
unless otherwise indicated, to:

Brook F. Minx, Esquire  
William T. Sebesta, Esquire  
Donato, Minx & Brown  
3200 Southwest Freeway  
Suite 2310  
Houston, TX 77027

Kathleen A. Kelley, Esquire (by hand)  
Hare & Chaffin  
160 Federal Street  
Boston, MA 02110

  
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Craig J. Ziady

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